

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

CHENEGA INTEGRATED SYSTEMS, LLC, and  
CHENEGA SECURITY PROTECTIVE SERVICES, LLC  
Employers

and

Case 5-RC-16299

INTERNATIONAL UNION, SECURITY, POLICE AND  
FIRE PROFESSIONALS OF AMERICA (SPFPA)  
Petitioner

**REPORT ON OBJECTIONS**

Pursuant to a Stipulated Election Agreement<sup>1</sup> approved by the undersigned on March 27, 2009, a mail ballot election was conducted with the ballots being mailed to the eligible voters on Friday, April 24.<sup>2</sup> The ballots were commingled and counted on Friday, May 22 with the following results:

Approximate number of eligible voters	64
Void ballots	0
Votes cast for Petitioner	9
Votes cast against participating labor organization	6
Valid votes counted	15
Challenged Ballots	0
Number of valid votes counted plus challenged ballots	15

Challenges were not sufficient in number to affect the results of the election.

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<sup>1</sup> The unit is: "All full time and regular part time security officers performing security services at the Employers' work site at the Arlington Hall Readiness Center in Arlington, Virginia; but excluding all professional employees, office clerical employees, sergeants, lieutenants, the project manager, and supervisors as defined by the Act." The eligibility period is the payroll period ending March 15, 2009, for employees of Chenega Security and Protection Services, LLC and March 20, 2009, for employees of Chenega Integrated Systems, LLC.

<sup>2</sup> All dates refer to 2009 unless otherwise noted.

On June 5, Chenega Integrated Systems, LLC (CIS) and Chenega Security Protective Services, LLC (CSPS) (collectively, the Employers) filed timely objections to conduct that they allege affected the results of the election<sup>3</sup>. The Objections are attached hereto as Exhibit A.

### **THE OBJECTIONS**<sup>4</sup>

In its objections, the Employers assert that subsequent to learning the results of the election, two CSPS employees and six CIS employees reported that they never received a ballot and were, therefore, deprived of their right to vote in the election.

In support of its objection, the Employers provide eight sworn declarations from employees indicating that they did not receive ballots. The declarations are signed, dated, and include this identical language:

I am providing this declaration of my own free will. I will receive no benefit for executing this declaration nor will I be disciplined or any way treated differently if I chose not to sign this declaration. I affirm that no ballot was received at my address from the National Labor Relations Board.

There were only three ballots that were returned by the Postal Service to the Region as undeliverable, detailed below.

#### **A) Employee A**

The first undeliverable ballot was received by the Region on or before May 7. The Board agent notified the Employers' attorney by e-mail on May 7 that Employee A's ballot was

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<sup>3</sup> The petition was filed on March 18. The undersigned will consider on its merits only that alleged interference which occurred during the critical period which begins on and includes the date of filing of the petition and extends through the election. *Goodyear Tire and Rubber Co.* 138 NLRB 453 (1962).

<sup>4</sup> The Employers' objections are stated in five paragraphs. Paragraph 1 does not contain objectionable conduct but is merely an introductory paragraph. Paragraphs 2 and 4 are addressed together inasmuch as they both address employees who reported that they did not receive ballots by mail. Paragraph 3 and part of Paragraph 5 are addressed in the second part of the Report inasmuch as they both address employees who claim that they voted "no", in a number greater than the number of "no" votes reflected in the tally.



returned as undeliverable, and asked for a better address. The attorney did not reply. Employee A is not one of the six employees who signed a statement attesting that he or she did not receive a ballot.

**B) Employee B**

The second undeliverable ballot was received by the Region on May 19. Since the count was to take place on May 22, there was insufficient time for a new ballot to be sent to and received by Employee B, and returned to the Region. Thus, no attempt was made to get a better address. Employee B is one of the six employees who signed a statement for the Employers attesting that he or she did not receive a ballot.

**C) Employee C**

The third undeliverable ballot was addressed to Employee C, and was returned as undeliverable to the Region on May 26, after the count had taken place. Employee C is one of the employees who signed a statement for the Employers attesting that he or she received a ballot and voted “no,” discussed below, although, as stated, the ballot was returned to the Region as undeliverable.

The remaining employees who assert they never received ballots, were actually mailed ballots at the same time as all other eligible voters. Moreover, none of these employees contend they ever called the Regional office in accordance with the instructions on the Notice of Election.

To determine whether a representative complement of voters has cast ballots, the Board applies the standard set in *Lemco Construction, Inc.* 283 NLRB 459 (1987). In *Lemco* the Board declared it will not depend upon a percentage test of eligible voters, but will find a representative complement to have voted if: (1) all employees have received adequate notice of the election;



(2) all employees have been given adequate opportunity to vote; and (3) employees are not prevented from voting by the conduct of one of the parties or by unfairness in the scheduling or mechanics of the election. “Only if it can be shown by objective evidence that eligible employees were not afforded an adequate opportunity to participate in the balloting will the Board decline to issue a certification and direct a second election.” *Id.* at 460 (internal citations omitted). In *Lemco*, the Board found that the employer failed to meet this burden, and it upheld the results of an election where only one out of a unit of eight eligible voters cast a vote. *Id.*

In the instant case, the Employers were required to post Notice of Election at their businesses instructing employees to call the Region if they believe they were eligible to vote and if they did not receive a ballot by May 1. The Employers do not suggest that they failed to post the Notices or that eligible employees did not have an opportunity to view the Notices. No employee called to report non-receipt of a ballot, nor did the Employers or Union notify the Region of any eligible employees who had not received ballots. Also, as mentioned, the Employers failed to provide a better address when its attorney was notified of one voter’s undeliverable address. “[W]here a party to an election, through its own action, negligence, or good-faith mistake, has prevented an eligible employee from voting, only the other, non-acting party has any foundation for an objection.” *George Washington University*, 346 NLRB 155, 156 (2005) (quoting *Barryfast, Inc.*, 265 NLRB 82 (1986)).

The Employers do not dispute that nine of the 15 votes timely received by the Region were cast in favor of the Petitioner, but argue that “it defies common sense” to believe such a large number of eligible employees, would not participate in the election. However, the Employers do not allege any specific conduct or irregularities that caused such a low



participation rate. The Employers cite *International Total Services*, 272 NLRB 201 (1984), in support for setting aside this election. There, the Board ordered a rerun election where 23 percent of the eligible voters were effectively disenfranchised by not receiving their ballots. In that case, 31 ballots were mailed, and seven were returned by the Postal Service as undeliverable. Id. Here, only three out of 64 ballots, less than five percent, were returned by the Postal Service as undeliverable. See *George Washington University*, 346 NLRB 155 fn. 5 (2005) (where Board distinguished *International Total Services*, rejecting the employer's argument that the election should be set aside where 20-30 out of 1217 eligible employees, or less than two percent, allegedly did not receive ballots). Therefore, since the Employers failed to show by objective evidence that eligible employees were not afforded an adequate opportunity to vote, I recommend overruling this Objection. *Lemco Construction, supra*.

The Employers also contend that subsequent to learning the results of the election, ten CSPS employees reported that they received a ballot, voted "no", and properly deposited the ballot in the mail for return delivery to the Region -- a greater number of "no" votes than reported in the tally of ballots.

In support of this portion of its Objection, the Employers submitted eight sworn statements signed by employees who attest that they received ballots, voted "no", and properly mailed them to the Board. [The Employers provide no explanation for why there are only 8 statements although the Objections allege ten employees reported receiving a ballot and properly voting "no".] The tally of ballots, as mentioned above, showed that six of the 15 votes cast were "no." The Employers argue that the evidence demonstrates at least four employees who voted "no" did not have their votes reflected in the tally.



The employee declarations are signed, dated, and include this language:

I am providing this declaration of my own free will. I will receive no benefit for executing this declaration nor will I be disciplined or any way treated differently if I chose not to sign this declaration. I affirm that I received a ballot from the National Labor Relations Board, that I cast a ballot voting "No" to representation by the union and properly placed the ballot in the mail for return delivery to the National Labor Relations Board.

Of the eight employees who signed the statements, the investigation reveals that five of these ballots were received and counted. One ballot, addressed to Employee C, was returned unopened by the Postal Service as undeliverable after the count, and the remaining two ballots were neither returned nor received as valid ballots. It is unknown how the five employees whose ballots were received actually voted because their ballots were properly removed from the indentifying envelopes and commingled before the count. Employee C's signed statement that he received his ballot and voted "no" is clearly not supported by the evidence.

Even assuming the remaining two ballots were lost by the United States Postal Service, those votes would not have been determinative. Neither would I rely upon the statements signed by those employees. The language about the employees signing "by their own free will" does not eliminate the employees' possible incentive to tell the Employers that they voted "no." It would be plainly contrary to the Board's secret ballot procedures to permit post-election claims by employees as to how they in fact voted. The election tally procedures in this case strictly followed the procedures set forth in the Board's Casehandling Manual. To accept employees' post-election claims as to how they voted in the election would be flatly inconsistent with the secret ballot election process.



Under Section 102.69(d), the Regional Director may conduct either an administrative investigation of objections or set them for hearing or both. A post-election hearing is granted only when there are substantial and material issues of fact that would warrant setting the election aside. *Care Enterprises*, 306 NLRB 491 (1992); *Speakman Electric Co.*, 307 NLRB 1441 (1992); and *NLRB v. Tio Pepe, Inc.*, 629 F.2d 964, 968 (4<sup>th</sup> Cir. 1980), citing *Gulf Coast Automotive Warehouse Co. v. NLRB*, 588 F.2d 1096 (5<sup>th</sup> Cir. 1979). A party seeking to challenge an election may not rely upon “the Board staff to seek out evidence that would warrant setting aside the election.” *U.S. Rubber Co. v. NLRB*, 373 F.2d 602, 606 (5<sup>th</sup> Cir. 1967) (internal citations omitted). Rather, the party seeking to set aside election results must submit prima facie evidence “of a kind which would be admissible into evidence at a hearing and subjected to evaluation as to its weight and probative force.” *Grants Furniture Plaza, Inc.*, 213 NLRB 410 (1974). Thus, the objecting party’s burden is heavy because conclusory allegations are insufficient and specific evidence is required. *NLRB v. Claxton Mfg. Co.*, 613 F.2d 1364, 1366 (5<sup>th</sup> Cir. 1980). In the instant case, the Employers failed to meet that burden.

### **SUMMARY**

Based on the investigation of the Employers’ objections, by failing to establish the existence of substantial or material issues within the critical period, the Employers have failed to set forth a prima facie case that would warrant setting aside the election results. Accordingly, I recommend that all of the Employers’ objections be overruled and that a Certification of Representative issue.



Dated at Baltimore, Maryland, this 12<sup>th</sup> day of June 2009.

(SEAL)

/s/ WAYNE R. GOLD

Wayne R. Gold, Regional Director  
National Labor Relations Board, Region 5  
Appraiser's Store Building  
103 South Gay Street, 8<sup>th</sup> Floor  
Baltimore, Maryland 21202

Under provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report, if filed, must be filed with the Board in Washington, D.C. Under provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of objections and which are not included in the Report, are not a part of the record before the Board unless appended to exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of the evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding. Exceptions must be received by the Board in Washington by **June 26, 2009**. The exceptions may be filed electronically through E-Gov on the Board's website, [www.nlr.gov](http://www.nlr.gov),<sup>5</sup> but may not be filed by facsimile.

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<sup>5</sup> Electronically filing exceptions is similar to the process described above for electronically filing the eligibility list, except that on the E-filing page the user should select the option to file documents with the Board/Office of the Executive Secretary.



**UNITED STATES OF AMERICA**  
**NATIONAL LABOR RELATIONS BOARD**  
**REGION FIVE**

CHENEGA SECURITY AND PROTECTION SERVICES, LLC

Employer,

and

CHENEGA INTEGRATED SYSTEMS, LLC

5-RC-16299

Employer,

and

INTERNATIONAL UNION, SECURITY, POLICE and  
FIRE PROFESSIONALS OF AMERICA (SPFPA)

Petitioner.

**OBJECTIONS TO ELECTION AND  
CONDUCT EFFECTING RESULTS OF ELECTION**

1. Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, the Employers, Chenega Security and Protection Services, LLC ("CSPS") and Chenega Integrated Systems, LLC, by and through their undersigned counsel, hereby object to the election and conduct affecting results of the election held on Friday, May 22, 2009, for the following reasons:
2. Subsequent to learning the results of the election, two CSPS employees reported that they never received a ballot and were therefore deprived of their right to vote in the election.
3. Subsequent to learning the results of the election, ten CSPS employees reported that they received a ballot, voted no and properly deposited the ballot in the mail for return delivery to the Labor Board.
4. Subsequent to learning the results of the election, six CIS employee reported that they never received a ballot and were therefore deprived of their right to vote in the election.
5. In light of the tally of ballots and the three vote differential reported therein, the fact that employees are reporting they did not receive ballots and that others did and then cast "no" votes in greater numbers than reported in the tally of ballots, the employees were

*Exh. 6, 1 A*



deprived of an expression of their voting desires and the conditions necessary for a fair election.

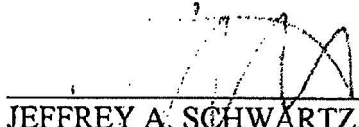
Accordingly, for all the foregoing reasons, the Employer requests that the Regional Director review and investigate the above misconduct and set aside the results of the election, or, in the alternative, issue an order directing that a hearing be held on the Employer's Objections as set forth herein.

Respectfully submitted this 29th day of May, 2009.

Respectfully submitted,

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By:

  
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